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OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

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Case Number: TSO-0124

This Decision concerns the eligibility of XXXXXXXXXXXX referred to as "the individual") to hold an access authorization (also known as a security clearance) under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." A Department of Energy Operations Office (DOE Operations Office) informed the individual that it was in possession of reliable information that created a substantial doubt regarding the individual's eligibility for access authorization under the provisions of Part 710. As set forth below it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be restored.

I. Background

The individual is employed by a DOE contractor and was granted an access authorization in December 2002. The contractor has requested a higher level access authorization. A routine background investigation revealed that in 1998 and 2002 the individual, a Vietnam veteran, had two episodes of "flashbacks" at work where he imagined himself under enemy fire in Vietnam, reliving an actual combat experience. DOE conducted a personnel security interview (PSI) with the individual in May 2003 to explore the security concern raised by this potentially derogatory information. DOE Exhibit (Ex.) 3-1 (PSI). When the PSI did not resolve the security concern, DOE referred the individual to a DOE consultant-psychiatrist (DOE psychiatrist) for a mental evaluation. The DOE psychiatrist evaluated the individual in August 2003, and concluded that the individual suffers from Post Traumatic Stress Disorder (PTSD), a condition which causes a significant defect in the individual's judgment and reliability. Ex. 2-1 (Report).¹

After receipt of the DOE psychiatrist's evaluation, the local security office initiated an administrative review proceeding. In February 2004, DOE suspended the individual's

¹ The *Diagnostic and Statistical Manual of the American Psychiatric Association*, IVth Edition TR (DSM-IV) describes PTSD as "the re-experiencing of an extremely traumatic event accompanied by symptoms of increased arousal and by avoidance of stimuli associated with the trauma."

access authorization and sent him a Notification Letter informing him of his right to a hearing and how to proceed to resolve the security concerns that had created a doubt regarding his eligibility for access authorization. The Notification Letter alleges that the individual “has an illness or mental condition of a nature which, in the opinion of a board-certified psychiatrist, causes, or may cause, a significant defect in his judgment or reliability.” 10 C.F.R. § 710.8 (h) (Criterion H).

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). I was appointed as Hearing Officer in this case. After conferring with the individual’s counsel and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, the DOE psychiatrist testified on behalf of the agency. The individual testified on his own behalf and also elected to call his wife, his manager, a colleague, and a psychiatrist. The transcript of the hearing will be hereinafter cited as “Tr.”.

II. Analysis

The applicable regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual’s future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for the granting of security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th. Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual’s eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual’s access authorization should be restored because I find that restoration would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual is a Vietnam veteran who retired from the military after 20 years of service. Report at 33. In 1994, the individual was granted a security clearance. Ex. 1-4. In 1998, the individual's employer experienced a layoff and reorganization. The individual's primary care physician prescribed 50 mg. of Zoloft daily to deal with pressures at work. PSI at 23-29; Ex. 2-2 (VA Records). After the reorganization, the individual attended a regularly scheduled meeting that he had customarily attended prior to the recent management changes. However, the new manager who chaired the meeting asked him to leave and announced to the room that his presence at the meetings was no longer required. PSI at 9-13. The individual became very upset, began shaking, and then went to his manager to explain what had happened. DOE Ex. 3-1 (PSI) at 9. At that point, he began to experience the same level of anxiety he felt in Vietnam during combat and felt that he was actually in Vietnam during the war. He tried to hide from "the enemy" and remained huddled in his cubicle for 20 minutes. PSI at 13. His manager called 911, and when the paramedics arrived at the office, they pretended to be fellow soldiers under fire in Vietnam who came to rescue him. *Id.* at 15-16. The individual "came to" after the paramedics removed him from the building. *Id.* They took him to a mental hospital, where he met with a counselor. *Id.* The counselor asked the individual to attend a group therapy session at the Veterans Administration (VA) Hospital. *Id.* at 17-18. The individual was discharged from the hospital that day. *Id.* at 19. He did not, however, attend any of the recommended sessions. *Id.* at 25.

The individual took a voluntary separation from that employer in 2001. PSI at 29. In November 2001, he found a new job in a manufacturing and production facility that employed many factory workers who worked with dangerous chemicals and machinery. *Id.* at 30-31. According to the individual, the company was very lax about occupational safety and there were many accidents on site. Tr. at 102-105. In April 2002, the individual proposed ordering work gloves for factory employees that cost substantially more than the gloves recommended by two purchasing employees. PSI at 33; Report at 16. The three had a disagreement over the purchase, and the individual became frustrated and so angry that he was shaking. PSI at 33. He went to a first aid station in order to type up a letter of resignation in private. Tr. at 109. According to the individual, he felt that his professionalism had been challenged by less qualified employees. *Id.* at 108. While in the nurse's station, he happened to see an employee whose hand was bleeding from a cut. PSI at 34. He again flashed back to his days in Vietnam, and thought he was under enemy fire. PSI at 35. The individual huddled in the corner of the room, crying, as if he were actually in combat. *Id.* at 35-36. His manager entered and tried unsuccessfully to calm him. PSI at 35. The injured employee then called 911. Ex. 1-4. However, when the paramedics arrived, they wore black uniforms, which reminded him of the black pajamas worn by Vietcong guerillas during the war. PSI at 36-38. Nonetheless, the paramedics were able to reassure him that they were there to help him, and he "came to" after talking to the paramedics. PSI at 37. This episode also lasted around 20 minutes. *Id.* at 36. They took him to the local Veterans Administration (VA) hospital, where he was treated and

released after one and a half hours. PSI at 38. Again, a counselor advised him to return to the VA for treatment. PSI at 41. The individual was laid off two weeks later. *Id* at 40.

After the incident, the individual had seven follow-up appointments with mental health professionals (psychiatrists and social workers) at the local VA hospital. DOE Ex. 2-2. In June 2002, his medication was increased to 100 mg. daily. Ex. 1-4 at 2. In August 2002, a VA psychiatrist increased his anti-depressant to 150 mg. daily, and referred the individual to the VA's PTSD clinic. *Id.* at 11; Ex. 2-2. He had two more appointments with the VA psychiatrist, and then was diagnosed with PTSD in November 2002. VA Records at 17-18. The psychiatrist also increased his dosage to 200 mg. *Id.*

During that month (November 2002), the individual began a new job with his current employer. PSI at 45. His new job was in an office environment, not a manufacturing facility, and he found this position to be much less stressful. *Id.* at 47-48. The individual also considered his new colleagues to be collegial and very professional. *Id.* at 52. He was granted an access authorization in December 2002. Report at 2.

The individual had his final VA appointment in February 2003. VA Records at 20; Tr. at 112-115, 125. The psychiatrist concluded that the individual was much improved, could return in four to five months for a follow-up and that he would refer the individual to his primary care physician to continue his anti-depressant medication at the same dosage. *Id.* at 20.; Tr. at 112, 125. The VA granted the individual a service-connected disability for the disorder. Ex. 2-2, 2-3. In March 2003, an FBI investigator asked the VA psychiatrist about the possibility that the individual would have another flashback. He wrote that it was "unlikely, particularly since he is on medication." VA Records at 21. He also opined that the individual's PTSD could impair his judgment. *Id.*

At the request of the local security office, the DOE psychiatrist evaluated the individual in July 2003. Prior to the evaluation, the DOE psychiatrist studied the individual's file. He then spent two and one-half hours with the individual and concluded that the individual did indeed suffer from PTSD. Tr. at 12, 16; Report at 36. He opined that the flashbacks caused a significant defect in the individual's judgment or reliability. Tr. at 16. Because the individual had experienced two flashbacks four years apart, the DOE psychiatrist stated that, in order to show adequate evidence of rehabilitation or reformation, the individual must demonstrate "at least five years with no significant defects in judgment or reliability attributable to PTSD." Report at 40.

B. Evidence of Rehabilitation and Reformation

The DOE psychiatrist and the individual's psychiatrist were present during the entire hearing. The individual's expert witness was a psychiatrist who testified that he had completed "a couple of thousand PTSD evaluations" for the local VA hospital. Tr. at 127. This psychiatrist had not, however, treated the individual. The individual's psychiatrist reviewed the DOE exhibits, interviewed the individual in November 2004, had phone consultations with the VA psychiatrist, and one phone interview with the individual's wife. Tr. at 129. He agreed with the diagnoses of PTSD set forth by the VA and DOE psychiatrists. *Id.* However, the individual's psychiatrist testified that in his opinion, the

individual does not have a significant defect in judgment or reliability, based on the absence of a relapse in the three years since his last episode, and a risk assessment that assigned a low risk of relapse to the individual. Tr. at 136. The psychiatrist found several mitigating factors for the individual: (1) the opinion of the VA psychiatrist that the individual is now stable and could be successfully treated by his primary care physician with the proper dosage of an anti-depressant; (2) the individual's stable home life and long marriage; and (3) the low level of stress in his current work environment in comparison to the two previous jobs where he had his episodes. Tr. at 131-147. The psychiatrist found no indication of a current problem and opined that the condition is "under control, in remission and has a very low probability of recurrence or exacerbation." Tr. at 134-138. He considered the individual to be "on the low end of impairment." *Id.* at 147.

After hearing the testimony of the individual and his witnesses, the DOE psychiatrist continued to insist that the individual must show five years without a relapse for adequate evidence of rehabilitation or reformation. Tr. at 159. He admitted that the five year time frame is arbitrary, and that there is an absence of good data on the probability of relapse. Tr. at 16-18; 159. Nonetheless, he argued that his was an "informed medical opinion." *Id.* at 16-18. The individual experienced his second episode four years after the first and his latest episode occurred three years prior to the hearing. "So the best opinion that I have is that for an adequate evidence of reformation where the risk of relapse is low, I would want to see five years with no symptoms of relapse." Tr. at 17. The DOE psychiatrist was particularly concerned because the flashbacks were triggered by stress, and because he considered the incidents that triggered the flashbacks to be ordinary business conflicts. Tr. at 20. He calculated the risk of relapse over the next five years as greater than 10%. *Id.* at 26. Even though the individual responded well to an increase in the dosage of his anti-depressant, the DOE psychiatrist noted that the individual was taking a "therapeutic dose" of Zoloft when he had his 2002 flashback. Report at 6, fn 9. According to the DOE psychiatrist, Zoloft lowers the probability of a PTSD episode, but does not cure the disorder. Tr. at 58.

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Review*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, the DOE psychiatrist recommended that the individual demonstrate five years without flashbacks in order to show rehabilitation or reformation from PTSD. On the other hand, the forensic psychiatrist (individual's psychiatrist) and the treating psychiatrist (VA psychiatrist) argue that the individual has already provided evidence of an adequate level of rehabilitation.

After carefully considering the testimony and records in this case, I agree with the opinions of the VA psychiatrist and the individual's psychiatrist. First, the VA psychiatrist and the individual's psychiatrist were experienced in treating PTSD cases. The individual's psychiatrist, for example, testified that he evaluated many PTSD cases for the VA and treated PTSD patients in his private practice. The DOE psychiatrist did not have the same level of familiarity with the disorder.² Second, the VA psychiatrist, assisted by other VA

² In fact, the DOE psychiatrist said that he relied on the VA records in diagnosing the individual as suffering from PTSD because the individual did not meet his criteria for PTSD. Tr. at 35.

mental health professionals, treated the individual for almost one year. The VA psychiatrist also had the benefit of the expertise of the PTSD clinic of the VA Hospital, a clinic that specialized in this disorder. The DOE psychiatrist, on the other hand, only saw the individual once for a two hour interview. See *Personnel Security Hearing*, OHA Case No. VSO-0011, 25 DOE ¶ 82,751 (1995) (discussing importance of repeated visits with patient in supporting credibility of treating psychiatrist); aff'd, *Personnel Security Review*, OHA Case No. VSA-0011, 25 DOE ¶ 83,014 (OHA, 1995). In addition, the individual progressed well under the treatment of the VA psychiatrist, who increased his anti-depressant dosage to an effective level. See *Personnel Security Review*, OHA Case No. VSA-0011, 25 DOE ¶ 83,014 (OHA, 1995) (discussing managing a mental condition in a responsible way as an important factor weighing in favor of restoring a security clearance).

The individual had been taking Zoloft at the lowest therapeutic dosage (50 mg), but after the VA psychiatrist increased the dosage of the individual's medication to the upper end of the therapeutic range, the individual showed continued progress. He, his wife, and coworkers commented on his improved mood, absence of intrusive memories and nightmares, and absence of irritability, especially towards his family. Even the DOE psychiatrist noted the importance of pharmacotherapy in reducing the symptoms of PTSD, and stated in his report that there is evidence that Zoloft reduces the symptoms of PTSD. Report at 21, fn 58; Report at 15, fn 29. Further, the individual's current job is much less stressful. He is no longer responsible for the safety of many workers in a hazardous production facility.³

In addition, the individual has manifested passive behavior during both episodes. He has not been aggressive or violent during either episode. In fact, compared to other cases involving PTSD that have been heard in this office, the individual's case seems moderate in its level of severity. See, e.g., *Personnel Security Hearing*, Case No. VSO-0184, 27 DOE ¶ 82,759 (1998) (aggression in workplace one year prior to hearing, two inpatient psychiatric hospitalizations, agitated behavior for several weeks); *Personnel Security Hearing*, Case No. VSO-0253, 27 DOE ¶ 82,804 (1999) (history of suicide attempt and arrests, involuntary stay in mental hospital); *Personnel Security Hearing*, Case No. VSO-0257, 27 DOE ¶ 82,805 (1999) (disorientation, nightmares, screaming in foreign language, unstable marital and job history); *Personnel Security Hearing*, OHA Case No. TSO-0130, 29 DOE ¶ 82,784 (2005) (four inpatient psychiatric hospitalizations, aggressive behavior, days without sleep, family problems). The individual has a very stable, 29 year marriage, supportive co-workers, and exhibits calm through his increased medication. He appeared calm and pleasant throughout the hearing, even though the proceeding must have been a stressful experience. His wife testified that he has been routinely even-tempered and easygoing since his medication was increased and since he began his current job. Tr. at 96-98. She was very credible and supportive. The individual's manager and colleague testified that their work environment was not stressful, that the individual had never exhibited any erratic behavior at work, and that he was a good worker. Tr. at 82-90.

³ I note that the incidents that caused the individual's flashbacks in the past do not seem overly stressful to me. In addition, there is no guarantee that his work environment will remain as stress-free as it is now. Nonetheless, there are positive factors that outweigh this concern, namely: the opinions of two psychiatrists experienced in treating PTSD, three years without a relapse, credible evidence regarding improvement in the individual's mood and stability as a result of his increased dosage of Zoloft, and a solid support system of a stable family and supportive co-workers and management.

To sum up, I am persuaded by the arguments of the individual's psychiatrist, and the records of the VA psychiatrist who treated him, that the individual has presented adequate evidence of reformation or rehabilitation from his condition. Three years have passed without a relapse, and both psychiatrists contend that the individual has a low risk of relapse. The individual is now managing his condition appropriately with the proper level of medication, assisted by the stabilizing influences of a loving family, a 29 year marriage, supportive co-workers, and a less stressful job environment.

III. Conclusion

The individual's mental illness, PTSD, raises a security concern because it impairs the individual's judgment and reliability. In this case, PTSD impaired the individual's judgment at his workplace during two twenty minute episodes in four years. Therefore, DOE's security concerns are valid and the agency has properly invoked Criterion H, 10 C.F.R. § 710.8 (h) in suspending the individual's access authorization.

However, the individual has presented adequate mitigating factors that alleviate the legitimate security concerns of the DOE Operations Office. In view of this criterion and the record before me, I find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should be restored. The Manager of the DOE Operations Office or the Office of Security may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: July 14, 2005